IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 423 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Smt. Pooja Rajput, W/o Sri Manoj Rajput, resident of Village, Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO. 424 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.

3. Sri Manoj Kumar, S/o Sri Shambhu Nath, resident of Village Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO. 425 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Sri Rajeev Gupta, S/o Dev Narayn, R/o Village Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

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WRIT PETITION NO. 426 (MS) OF 2006

State of Uttaranchal, through Collector, Pauri Garhwal.

.....Petitioner.

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority (Eviction)/Up Ziladhikari, Kotdwar, District Pauri Garhwal.
3. Sri Kheem Chand Gaholot, S/o Sri Ram Chandra, resident of Village Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil Kotdwar, District Pauri Garhwal.
4. Bharat Sadhu Samaj, through its Manager (Substituted).
5. Swami Sukhdevanand Trust Parmarth Niketan Swargasharam, through its Managing Trustee all the residents of Villages Jonk, Swargasharam, Patti Udaipur, Talla-1, Tehsil-Kotdwar, District Pauri Garhwal.

.....Respondents.

Mr. R.C. Arya, Standing Counsel for the State of Uttaranchal.

Dated: 25.04.2006

Hon'ble Rajesh Tandon, J.

By the present writ petitions, the petitioner has prayed for a writ of certiorari quashing the order dated 16th February, 2005 (Annexure No. 20 to the writ petitions) passed by the respondent no. 1 i.e. District Judge, Pauri Garhwal and to restore the order dated 18.11.2002 (Annexure No. 19 to the writ petitions) passed by the respondent no. 2.

A perusal of the appellate order shows that the appeal has been allowed only on the ground that the proceeding for cancellation of the lease deed is pending in appeal before the Commissioner, Garhwal Mandal, Pauri.

Briefly stated, the proceedings under Section 4/5 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, were initiated on the basis of Challani report of the Patwari Pauri stating therein that the respondents are unauthorized occupant and are liable to be evicted in the aforesaid proceedings. As will appear from the report that Halka Patwari went to the spot and he found the illegal possession of the respondents over the land in question and accordingly prepared a map, extract of Khasra and Khatauni at the spot.

According to the petitioner, the land has been recorded in the name of the U.P. Government now the State of Uttaranchal. On the basis of the aforesaid Challani report, a notice was issued U/s 4(1) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act requiring the respondents to show cause with regard to the unauthorized occupation. The occupant has filed the reply denying the fact that he is in illegal occupation.

The Prescribed Authority has passed the order on 11.08.1950 by observing that the lease was granted in favour of the Geeta Bhawan and the Geeta Bhawan having violated the terms and conditions and thereafter on 21.09.1988, the lease in favour of the Bharat Sadhu Samaj was cancelled and the same has vested with the State Government. Following order was passed by the prescribed authority:-

''उपर्युक्त विवेचन से स्पस्ट है कि ग्राम जौंक पट्टी उदयपुर तल्ला तहसील कोटद्वार, जिला पौड़ी के खेत नं0 64 मध्ये प्रप्नगत भूमि जिसका रकवा 47X8 56 वर्ग मीटर जो उ0प्र0 सरकार के नाम पर बगड़ दर्ज है, पर प्रतिवादी संख्या –2 भारत साधू समाज ने गीता भवन उन्हें लीज पर स्वीकृत भूमि को अवैधानिक रूप से 1960 में प्राप्त कर उस भवन/दुकान का निर्माण कर कब्जा किया हुआ है। प्रतिवादी संख्या–2 द्वारा दुकान प्रतिवादी संख्या–1 दुकानदार को किराये के रूप में काबिज हैं।

प्रतिवादी संख्या–3 सुखदेवानन्द टेस्ट परमार्थ निकेतन का प्रप्नगत भवन/दुकान पर प्रत्यक्ष अथवा परोक्ष कब्जा नहीं पाया गया है।

आदेप्र

उपर्युक्त विवेचना के आधार पर अवैध अध्यासी संख्या –1 पूजा राजपूत पत्नी मनोज रापूत निवासी ग्राम जौंक र्स्विग्रिमक्र पट्टी उदयपुर तल्ला तहसील कोटद्वार र्जिो किरायेदार के रूप में दुकान पर काबिज हैंक्र प्रतिवादी संख्या–2 भारत साधु समाज द्वारा प्रबन्धक र्जिो प्रप्नगत भवन/दुकान के स्वमी हैंक्र तथा अवैध अध्यासी संख्या –3, सुखदेवानन्द टेस्ट परमार्थ निकेतन द्वारा सावर्जजनिक भूगृहदि अधिनियम – 1972 की धारा –4र्िक्र के तहत क्रमप्रः दिनांक 2.11.98, 26.08.2000 एवं दिनांक 27.01. 2001 को जारी नोटिसों को अन्तिम किया जाता है। तथा उन्हें ग्राम जौंक र्स्विग्रिमक्र के खसरा नम्बर –63 को 7x8ं 56 वर्ग मीटर भूमि से बेदखल किया जाता है। तद्नुसार प्रपत्र–ख जारी हो बाद आवप्रयक कार्यवाही के पत्रावली अभिलेखागार में संचित हो।''

Three separate appeals were preferred by the respondent no.3, respondent no.4 and the State.

The appeals were allowed with the observation that the Commissioner Garhwal Mandal has already stayed the order passed by the District Magistrate cancelling the lease.

In view of the aforesaid, the matter is sent back to the District Judge for deciding the appeal afresh after awaiting the result of the proceedings with regard to the cancellation of the lease.

Subject to the aforesaid, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J.)

25.04.2006
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